

RECEIVED

JAN 26 1996

Before the  
Federal Communications Commission  
Washington, DC

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of	)	MM Docket No. 93-107
	)	
DAVID A. RINGER	)	File No. BPH-911230MA
	)	
ASF BROADCASTING CORP.	)	File No. BPH-911230MB
	)	
WILBURN INDUSTRIES, INC.	)	File No. BPH-911230MC
	)	
SHELLEE F. DAVIS	)	File No. BPH-911231MA
	)	
OHIO RADIO ASSOCIATES	)	File No. BPH-911231MC

For Issuance of a Construction Permit  
for a New FM Station on Channel  
280A in Westerville, OH

DOCKET FILE COPY ORIGINAL

To: The Review Board

**MOTION FOR LEAVE TO AMEND**

Shellee F. Davis ("Davis"), by her attorney, hereby requests leave to amend her pending application for Westerville, Ohio, to change the name and structure of her application. With respect thereto, the following is stated:

1. The amendment, a copy of which is attached hereto, is designed to effect a minor change in Davis' application insofar as the amendment changes the name and structure of the applicant (to "Davis Broadcasting Company, Ltd.", an Ohio Limited Liability Corporation), and adds another principal to the application. Shellee Davis retains majority control and ownership of the newly structured applicant, and thus the amendment is a permissible, *pro forma*, ownership change, under the Commission's Rules.

2. This application is part of a proposed universal settlement of this proceeding that is currently pending before the Review Board, under which Davis will be the sole surviving

No. of Copies rec'd  
List ABCDE

028

applicant. Consequently, acceptance of the Amendment will not require the modification or addition of issues in this proceeding, require additional hearings, unfairly prejudice the other parties, or cause Davis to gain a "comparative advantage." Moreover, the Amendment is not strictly "voluntary," insofar as it reports a "minor change" in the ownership of her application of the sort that is permissible under the Commission's Rules, but which must be reported under Section 1.65 of the Commission's Rules. Accordingly, "good cause" exists for acceptance of the Amendment. Erwin O'Connor Broadcasting Co., 22 F.C.C.2d 142, 143 (Rev. Bd. 1970).

3. Davis initially proposed to be "integrated" full-time in the day-to-day affairs of the proposed Station as General Manager. Since the hearing in this proceeding, the United States Court of Appeals eliminated integration as a viable factor to be considered by the Commission in awarding broadcast licenses, stating that the "integration of ownership into management" criteria was arbitrary and capricious. Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993)." In view of Bechtel, the Commission announced that "prevailing applicants will not be required to adhere to their integration proposals in [post-designation] settlements." FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994).<sup>1</sup> Consistent with these changed circumstances, as a part of the amendment, Davis also requests that she formally be released from her prior integration pledge, and amends her application accordingly.

---

<sup>1</sup> Prior to the Public Notice, under the Rules established in Proposals to Reform the Commission's Comparative Hearing Process, 68 R.R.2d 944 (1990), applicants could only be relieved of integration proposals if requested prior to the Notice of Appearance date. Id. at 951-51, ¶¶ 21-22.

WHEREFORE, it is respectfully requested that this Motion be granted.

Respectfully requested,

SHELLEE F. DAVIS

By: 

Dan J. Alpert

Her Attorney

*The Law Office of Dan J. Alpert*  
2120 N. 21st Rd.  
Suite 400  
Arlington, VA 22201

*January 25, 1996*

## **AMENDMENT**

Please amend the application of Shellee Davis as follows:

1. Section I of the application is amended to change the name of the applicant to "Davis Broadcasting Company, Ltd.". Its address is:

7030 Cloverdale Lane  
Worthington, OH 43235

2. Section II, Question I is amended to reflect that the applicant is a "Limited Liability Corporation."

3. Section II, Question 3 is amended to state that the date and place of formation was January 10, 1996, in Columbus, Ohio.

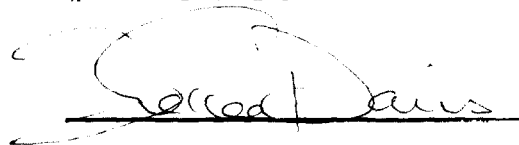
4. Section II, Question 6 of the application is revised to reflect that the Members of the Limited Liability Corporation are Shellee Davis (51% vote, President and Secretary) and Reginald Davis (49% vote, Vice President and Treasurer). Shellee Davis' address remains 7030 Cloverdale Lane, Worthington, Ohio 43235. Reginald Davis' address is 20337 Valley Forge Palace, King of Prussia, Pennsylvania 19406. There are no other Members or officers in the Limited Liability Corporation.

5. Section II, Question 7 of the application is revised to reflect that Reginald Davis was the General Partner of an applicant for Channel 255A, Upper Arlington, Ohio (MM Docket No. 87-370, File No. BPH-860507OZ). That application was voluntarily dismissed with prejudice by settlement agreement.

6. In light of the settlement in this proceeding, Shellee Davis no longer pledges to work full-time at her proposed facility.

All other portions of the application remain true and accurate. Amended pages to her application are attached hereto.

**SHELLEE DAVIS**

A handwritten signature in dark ink, appearing to read 'Shellee Davis', is written over a horizontal line.

Signed and dated this 24 day of January, 1996.

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only	FEE NO:	For APPLICANT Fee Use Only
	FEE TYPE:	Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	FEE AMT:	If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity
	ID SEQ:	FOR COMMISSION USE ONLY  FILE NO.

Section I - GENERAL INFORMATION

1. Name of Applicant  Davis Broadcasting Co., Ltd.			Send notices and communications to the following person at the address below: Name  Dan J. Alpert, Esq. Law Office of Dan J. Alpert		
Street Address or P.O. Box 7030 Cloverdale Lane			Street Address or P.O. Box 2120 N. 21st Rd., Suite 400		
City Worthington	State OH	ZIP Code 43235	City Arlington	State VA	ZIP Code 22201
Telephone No. (Include Area Code)			Telephone No. (Include Area Code) (703) 243-8690		

2. This application is for: ☐ AM ☒ FM ☐ TV

(a) Channel No. or Frequency  280A	(b) Principal Community	City Westerville	State OH
--	-------------------------	---------------------	-------------

(c) Check one of the following boxes:

☐ Application for NEW station

☐ MAJOR change in licensed facilities; call sign: \_\_\_\_\_

☐ MINOR change in licensed facilities; call sign: \_\_\_\_\_

☐ MAJOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐ MINOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☒ AMENDMENT to pending application; Application file number: EPH-911231MA

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

If Yes, state:	Call letters	Community of License	
		City	State

**Section II - LEGAL QUALIFICATIONS**

Name of Applicant

Davis Broadcasting Company, Ltd.

1. Applicant is: (check one box below)

☐ Individual

☐ General partnership

☐ For-profit corporation

☒ Other

☐ Limited partnership

☐ Not-for-profit corporation

2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership, or corporation, describe in an Exhibit the nature of the application.

Exhibit No. 1

**NOTE:** The terms "applicant," "parties to this application," and "non-party equity owners in the applicant" are defined in the instructions for Section II of this form. Complete information as to each "party to this application" and each "non-party equity owner in the applicant" is required. If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement with appropriate justification.

3. If the applicant is not an individual, provide the date and place of filing of the applicant's enabling charter (e.g., a limited partnership must identify its certificate of limited partnership and a corporation must identify its articles of incorporation by date and place of filing):

Date January 10, 1996 Place Columbus, OH

In the event there is no requirement that the enabling charter be filed with the state, the applicant shall include the enabling charter in the applicant's public inspection file. If, in the case of a partnership, the enabling charter does not include the partnership agreement itself, the applicant shall include a copy of the agreement in the applicant's public inspection file.

4. Are there any documents, instruments, contracts or understandings (written or oral), other than instruments identified in response to Question 3 above, relating to future ownership interests in the applicant, including but not limited to, insulated limited partnership shares, nonvoting stock interests, beneficial stock ownership interests, options, rights of first refusal, or debentures?

☐ Yes ☒ No

If Yes, submit as an Exhibit all such written documents, instruments, contracts, or understandings, and provide the particulars of any oral agreement.

Exhibit No.  
N/A

5. Complete, if applicable, the following certifications:

(a) Applicant certifies that no limited partner will be involved in any material respect in the management or operation of the proposed station.

☒ Yes ☐ No

If No, applicant must complete Question 6 below with respect to all limited partners actively involved in the media activities of the partnership.

(b) Does any investment company (as defined in 15 U.S.C. Section 80 a-31), insurance company, or trust department of any bank have an aggregated holding of greater than 5% but less than 10% of the outstanding votes of the applicant?

☐ Yes ☒ No

If Yes, applicant certifies that the entity holding such interest exercises no influence or control over the applicant, directly or indirectly, and has no representatives among the officers and directors of the applicant.

☐ Yes ☐ No

N/A

Section 11 - LEGAL QUALIFICATIONS (Page 2)

6. List the applicant, parties to the application and non-party equity owners in the applicant. Use one column for each individual or entity. Attach additional pages if necessary.

(Read carefully - The numbered items below refer to line numbers in the following table.)

- |   |   |
|---|---|
| <p>1. Name and residence of the applicant and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.</p> <p>2. Citizenship.</p> <p>3. Office or directorship held.</p> <p>4. Number of shares or nature of partnership interests.</p> <p>5. Number of votes.</p> | <p>6. Percentage of votes.</p> <p>7. Other existing attributable interests in any broadcast station, including the nature and size of such interests.</p> <p>8. All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in 47 C.F.R. Section 73.3555 and 76.501, including the nature and size of such interests and the positions held.</p> |
|---|---|

1.	Davis Broadcasting Company, LTD. 7030 Cloverdale Lane Worthington, OH 43235	Shellee Davis 7030 Cloverdale Lane Worthington, OH 43235	Reginald Davis 20337 Valley Forge Palace King of Prussia, PA 19406
2.	Ohio Limited Liability Corporation	USA	USA
3.	N/A	Member President, Secretary	Member Vice President, Treasurer
4.	2	1	1
5.	2	1	1
6.	100%	51%	49%
7.	None	None	None
8.	None	None	None

Section 11 - LEGAL QUALIFICATIONS (Page 3)

7. Does the applicant, any party to the application or any non-party equity owner in the applicant have, or have they had, any interest in:

(a) a broadcast station, or pending broadcast station application before the Commission?

☒ Yes ☐ No

(b) a broadcast application which has been dismissed with prejudice by the Commission?

☒ Yes ☐ No

(c) a broadcast application which has been denied by the Commission?

☒ Yes ☐ No

(d) a broadcast station, the license of which has been revoked?

☐ Yes ☒ No

(e) a broadcast application in any pending or concluded Commission proceeding which left unresolved character issues against the applicant?

☐ Yes ☒ No

If the answer to any of the questions in (a)-(e) above is Yes, state in an Exhibit the following information:

Exhibit No.  
2

(1) Name of party having interest;

(2) Nature of interest or connection, giving dates;

(3) Call letters of stations or file number of application or docket; and

(4) Location.

8. (a) Are any of the parties to the application or non-party equity owners in the applicant related (as husband, wife, father, mother, brother, sister, son or daughter) to each other?

☐ Yes ☒ No

(b) Does any member of the immediate family (i.e. husband, wife, father, mother, brother, sister, son or daughter) of any party to the application or non-party equity owner in the applicant have any interest in or connection with any other broadcast station, pending broadcast application or newspaper in the same area (see Section 73.3555(c)) or, in the case of a television station applicant only, a cable television system in the same area (see Section 76.501(a))?

☐ Yes ☒ No

If the answer to (a) or (b) above is Yes, attach an Exhibit giving full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the file number of such application, and the location of such station or proposed station.

Exhibit No.  
N/A

9. State in an Exhibit any interest the applicant or any party to this application proposes to divest in the event of a grant of this application.

Exhibit No.  
None

OTHER MASS MEDIA INTERESTS

10. (a) Do individuals or entities holding nonattributable interests of 5% or more in the applicant have an attributable ownership interest or corporate officership or directorship in a broadcast station, newspaper or CATV system in the same area? (See Instruction 8 to Section 11.)

☒ Yes ☐ No

(b) Does any member of the immediate family (i.e. husband, wife, father, mother, brother, sister, son or daughter) of an individual holding a nonattributable interest of 5% or more in the applicant have any interest in or connection with any other broadcast station, pending broadcast application, newspaper in the same area (see Section 73.3555(c)), or, in the case of a television station applicant only, a cable television system in the same area (see Section 76.501(a))?

☒ Yes ☐ No

If the answer to (a) and/or (b) above is Yes, attach an Exhibit giving a full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the file number of such application, and the location of such station or proposed station.

Exhibit No.  
N/A



#### Section IV-A - PROGRAM SERVICE STATEMENT

Attach as an Exhibit, a brief description, in narrative form, of the planned programming service relating to the issues of public concern facing the proposed service area.

Exhibit No.  
**No change**

#### Section IV-B - INTEGRATION STATEMENT

Attach as an Exhibit the information required in 1. and 2. below.

Exhibit No.  
**3**

1. List each principal of the applicant who, in the event of a grant of the application on a comparative basis proposes to participate in the management of the proposed facility and, with respect to each such principal, state whether he or she will work full-time (minimum 40 hours per week) or part-time (minimum 20 hours per week) and briefly describe the proposed position and duties.
2. State with respect to each principal identified in response to item 1. above, whether the applicant will claim qualitative credit for any of the following enhancement factors:
  - (a) Minority Status
  - (b) Past Local Residence  
If Yes, specify whether in the community of license or service area and the corresponding dates.
  - (c) Female Status
  - (d) Broadcast Experience  
If Yes, list each employer and position and corresponding dates.
  - (e) Daytime Preference

## **EXHIBIT 1**

Davis Broadcasting Company, Ltd. is an Ohio Limited Liability Corporation.

## **EXHIBIT 2**

Reginald Davis was the General Partner of an applicant for Channel 255A, Upper Arlington, Ohio (MM Docket No. 87-370, File No. BPH-860507OZ). That application was voluntarily dismissed with prejudice by settlement agreement.

### **EXHIBIT 3**

In the event this amendment is accepted and her application is granted by way of settlement agreement, although Shellee Davis expects to be intrinsically involved on a day-to-day basis with the management of the Station, no party to this application intends necessarily to work strictly on a "full-time" schedule with respect to the proposed operations of the proposed facility, nor will she now divest her ownership in her other business.

**CERTIFICATE OF SERVICE**

I, Dan J. Alpert, hereby certify that foregoing document was served on January 26, 1996 upon the following parties by First Class Mail, postage prepaid, or by Hand:

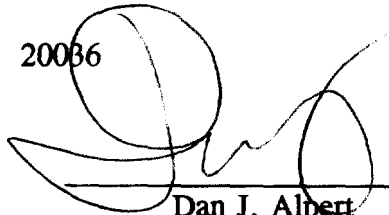
James Shook, Esq.  
Hearing Branch  
Federal Communications Commission  
Room 7212  
2025 M Street, NW  
Washington, DC 20554

Arthur V. Belendiuk, Esq.  
Smithwick & Belendiuk, P.C.  
1990 M Street, NW  
Suite 510  
Washington, DC 20036

James F. Koerner, Esq.  
Baraff, Koerner, Olender & Hochberg, P.C.  
5335 Wisconsin Ave, NW  
Suite 300  
Washington, DC 20015-2003

Stephen T. Yelverton, Esq.  
McNair & Sanford  
1155 15th St., NW  
Suite 400  
Washington, DC 20005

Eric S. Kravetz, Esq.  
Brown, Nietert & Kaufman, Chtd.  
1920 N Street, NW  
Suite 660  
Washington, DC 20036



\_\_\_\_\_

Dan J. Alpert